IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Bail Appl..No. 4409 of 2007()

CP.94/2006 of DISTRICT COURT, THALASSERY
CRIME NO.237/05 OF KUTHUPARAMBA POLICE STATION

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PETITIONERS : ACCUSED (A1,A5 AND A7):

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1. MUHAMMADALI, S/O.ABDULLAKUTTY,
   AGED 36 YEARS BUSINESS, PALOLL HOUSE,
   P.O.NEERVELI, KUTHUPARAMBA.

2. RIYAS.P.K., S/O.KUNHAMMED,
   AGED 36 YEARS, BUSINESS,
   RAFEENA MANZIL, P.O.NEERVELI, KUTHUPARAMBA.

3. ISMATH AND SHAMEER.C.N., S/O.KHADER,
   AGED 26 YEARS, BUSINESS HAJIRO MANZIL,
   P.O.NEERVELI, KUTHUPARAMBA.

BY ADV. SRI.P.P.RAMACHANDRAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA (S.H.O. KUTHUPARAMBA
POLICE STATION), REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4409 OF 2007

Dated this the 23rd day of July, 2007

ORDER

Application for anticipatory bail. The petitioners face indictment for offences punishable, inter alia, under Secs.324 and 308 read with Sec.149 of the IPC. The petitioners are accused 1, 5 and 7. The crux of the allegations against the petitioners is that they were members of an unlawful assembly of persons, who in prosecution of their common object, threw stones at a procession. The procession was of Congress men. The petitioners allegedly belong to the L.D.F. Investigation is complete. Final report has already been filed. Committal proceedings has been registered. The petitioners apprehend arrest in execution of the coercive processes issued by the learned Magistrate.

2. The learned counsel for the petitioners submits that the allegations under Sec.308 of the IPC have been raised

without any valid reason. Solely with the intention of vexing and harassing the petitioners, the allegation under Sec.308 of the IPC has been included. The allegation is only stone throwing and the injury suffered is a 5 x 3 cms. abrasion on the right knee by the victim. The allegation under Sec.308 of the IPC is raised only to ensure that the petitioners remain in custody for as long a period as possible by making it appear that the offence punishable is a serious sessions offence. Appropriate directions may be issued under Sec.438 of the Cr.P.C., it is prayed.

3. The learned Public Prosecutor, in the facts and circumstances of this case, does not oppose the application. After the decision in **Bharat Chaudhary and another v. State of Bihar** (AIR 2003 SC 4662), it is trite that the powers under Sec.438 of the Cr.P.C. can be invoked in a case where the apprehended arrest is in execution of coercive process issued by a court after taking cognizance. In the facts and circumstances of this case, I am satisfied that this is an eminently fit case where such extraordinary equitable discretion does deserve to be invoked.

4. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 30/7/07. They shall be released on regular bail on their executing bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 31/7/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 30/7/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 30/7/07.

Sd/-
(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge